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February 19, 1998

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In re: Skinner Landfill ADR Allocation Supplemental Questions

Dear Mr. Barkett:

Now comes Dick Clarke, by and through counsel, and hereby responds to the Supplemental Questions received from plaintiffs. Initially, as previously indicated, Dick Clarke's response will be limited to Clarke Services, Inc., Dick Clarke Company, and Clarke, Inc. Further, Dick Clarke's initial response is incorporated herein by reference in that said response is true and accurate to the best of Dick Clarke's knowledge. It is clear that the testimony provided by witnesses relating to Clarke entities, Thomas Clark, Sr., Dick Clarke and Martin Clarke is inaccurate and certainly unreliable. Again, Dick Clarke is not, and has never been a generator and/or transporter of hazardous waste materials and/or a generator or transporter of empty barrels, drums, tanks or other containers. Finally, Dick Clarke has made an exhaustive search and provided all records available and has provided his best recollection. It is of notable interest that the questionnaire calls for information from 1930 through 1990, and Dick Clarke was not born until 5/18/39.

**RESPONSE TO SKINNER LANDFILL ADR ALLOCATION
SUPPLEMENTAL QUESTIONS**

1. In order to clarify the relationship among all the Clarke entities to assist the Allocator in determining the relative contribution of each of the conditions at the Skinner Landfill, all Clarke entities which were in any way involved with waste generation, hauling, or disposal activities within 75 miles of the Site at any time should be identified, including, without limitation, Clarke's Sanitary Fill, Clarke's Complete Collection, Clarke's Disposal, Clarke Services, Inc., Clarke's Incinerators, Inc., Clarke Container, Inc., Mid-American Waste, Dick Clarke Company, Dick Clarke Trash Removal and Demolition, Clarke, Inc.,

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and Landfill, Inc. (referenced in documents related to the sale of Clarke Services, Inc. to Browning-Ferris Industries of Ohio, Inc.). In their identification, the Clarke entities should provide each entity's full name and any other name(s) used by the entity and the dates during which such name(s) were used, the entity's address and legal form, the date and state of incorporation, if any, and a brief description of its business from 1930-1990. The response should also indicate what entities were empowered to conduct transactions on behalf of other entities (e.g., Invoices addressed to Clarke Services, Inc. were paid by Dick Clarke Co.), and identify all such transactions. For each entity, the titles held by Martin and/or Dick Clarke should be identified, the roles of Martin and/or Dick Clarke should be described, and the percentage of ownership and extent of control by Martin and/or Dick Clarke in each entity should be specified along with information detailing how and from whom or what such ownership and/or control was obtained, breaking down the information provided by time period as necessary. Additionally, if any of the Clarke entities no longer exist or exist in a different form because of one or more transactions involving mergers, consolidations, the sale or transfer of stock or assets or dissolution, the information sought by Questions 23(f) and (9) should be provided. This information should also be provided in light of the contention of the Clarke entities that no current Clarke entity is liable for any materials held by Clarke's Sanitary Fill, Clarke's Complete Collection, or any other entity associated with Thomas Clarke. As part of its response to this follow-up question, the Clarke entities should identify the sources of information consulted in preparing their response and provide copies of all supporting documentation.

RESPONSE: It is Dick Clarke's belief that Clarke's Sanitary Fill and Clarke's Complete Collection, if actually used for business purposes, relate to entities operated by Thomas Clarke, Sr. Dick Clarke is not familiar with Clarke Disposal. Information related to Clarke Services, Inc., Dick Clarke Company and Clarke, Inc. was provided in response to the initial ADR Allocation Questionnaire. No entity or individual has ever been empowered to act on behalf of an entity operated by Dick Clarke. Dick Clarke Trash Removal and Demolition is not, and never was, more than an advertisement on a sign placed on Cincinnati Dayton Road, Union Township, Ohio. Clarke Incinerators, Inc. was an incinerator facility located on Kemper Road. The incinerators were shut down in the mid-1970's and, thereafter, debris was taken to Stubbs-Mills Landfill ("Landfill, Inc.") in Morrow, Ohio, Schlichter Landfill in Ross, BFI's Landfill in Fairfield or Rumpke's Landfill. Ash from the incinerator was not transported. Upon information and belief, Mid American Waste purchased Clarke Incinerator, Inc. from Martin Clarke.

Clarke Services, Inc. was purchased by Dick Clarke in 1980. Clarke Services, Inc. was a hauling company. Clarke Services, Inc. did not haul any materials to the Skinner site. Clarke Services, Inc. was sold to BFI in March of 1984. Upon information and belief,

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Clarke logos on the equipment purchased by BFI were never removed after the purchase.

Dick Clarke was employed by Thomas Clarke, Sr. in various capacities from the early 1960's until Dick Clarke purchased Clarke Services, Inc. in 1980, (i.e.) operated bulldozers, cleaned furnaces, did mechanic maintenance and general labor work. Dick Clarke would also pick up loads to be burned. In the absence of Thomas Clarke, Sr., Dick Clarke had input into hiring general laborers.

2. The Clarke entities should identify all time periods in which Martin and/or Dick Clarke conducted any waste generation, hauling or disposal activities as individuals or in conjunction with a sole proprietorship and detail the activities undertaken.

RESPONSE: Dick Clarke Company did little, if any, transporting in the late 1980's in order to comply with the non-compete agreement signed with BFI in March, 1984. (See response to initial ADR Allocation Questionnaire). Dick Clarke did not own, conduct or participate in any waste generating, hauling or disposal activities as an individual or sole proprietorship other than through Dick Clarke Company as referenced above.

3. Regardless of the Clarke entities' contention that no current Clarke entity is liable for any of the materials transported by Clarke's Sanitary Fill and/or Clarke's Complete Collection & Combustion Co. or any other entity associated with Thomas Clarke, the Questionnaire's definitions require the addressee to provide information in response to every applicable Question for both the entity itself and "any and all predecessor entities of the addressee entity, including any entity purchased by the addressee." The Clarke entities must undertake a "full and thorough" investigation and provide the information sought by the Questionnaire for all of the named Clarke entities, including Clarke's Sanitary Fill and Clarke's Complete Collection & Combustion Co.

RESPONSE: Dick Clarke has provided all information available to him related to Clarke's Sanitary Landfill and Clarke's Complete Collection & Combustion Co.

4. The Clarke entities' responses are facially deficient and should be revisited upon a "full and thorough" investigation, which the ADR Questionnaire defines to include, at a minimum, a review of all which might contain relevant information and interviews of all reasonably available persons with respect to their knowledge of any of the Clarke entities' waste generation, hauling and/or disposal activities and their knowledge of "any connection

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whatsoever that [the Clarke entities] may have had with the Site. . . either directly or indirectly, during the relevant time period." The Clarke entities' responses to Questions 7(f), 21(f) and 27, among others, demonstrate that they have not yet conducted the required "full and thorough" investigation.

RESPONSE: Dick Clarke has made an exhaustive search for documents related to waste generation, hauling and disposal activities as they relate to the Skinner site. As has been previously indicated, and regardless of inconsistent and wholly inaccurate and unreliable testimony of witnesses, the Skinner site was a competitor of Clarke Incinerator, Inc. and Stubbs-Mills Landfill as well as Schlichter, BFI and Rumpke Landfills. In addition, Dick Clarke has clearly and repeatedly stated that he did not, by or through his operations or any other, generate, haul or dispose of hazardous materials. Dick Clarke made every possible effort to advise and ensure that debris was free of hazardous materials or the debris would not be handled. It is unnecessary to contact all of Dick Clarke's former employees to verify that Dick Clarke did not generate, haul or dispose of hazardous wastes; however, he is making an effort to locate some former employees, (i.e.) Burt Cowan, who is now employed by BFI.

5. The Clarke entities should provide a detailed description of their vehicle inventory for the relevant time period. In response to this follow-up question, the Clarke entities should identify the types of vehicles used, the capacity of each vehicle, the color and any identifying markings of each vehicle, each Clarke entity that owned or used the vehicle, the period of use of the vehicle by Clarke entities, the previous owner of the vehicle, how ownership was acquired by the Clarke entity, and to whom the vehicle was sold or otherwise transferred.

RESPONSE: The vehicles owned by Clarke Services, Inc. and sold to BFI in March of 1984 are listed on the list of assets provided in response to the original ADR Allocation Questionnaire. Following the sale of Clarke Services, Inc. to BFI, the Dick Clarke Company owned one 1980 Mack roll-off truck and four lime green containers with no logos. The vehicles and containers sold to BFI had "Clarke", the telephone number (779-2000) and a four leaf clover.

In July, 1990, Dick Clarke incorporated Clarke, Inc., and the corporation owned a 1980 D.M. Mack truck (green), a 1979 and a 1977 Kenworth (blue and later green).

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6. Several eyewitnesses specifically recall Clarke Container, Inc. hauling materials to the Skinner Landfill over a period of time. Dick Clarke indicated that he purchased Clarke Container, Inc. from Martin Clarke in 1980, renaming it Clarke Services. The response of Clarke Container, Inc., however, states that Clarke Container, Inc. was not incorporated until 1986. Given the evidence linking Clarke Container to the disposal of waste at the Site from the 1950s until the Site was closed in 1990, and the Clarke entities' conflicting responses regarding the business practices and history of Clarke Container, Inc., the Clarke entities should revisit their past responses and fully "identify" Clarke Container, Inc. and provide the information regarding its waste stream as required by Questions 6-11, 21, 22, and 27.

RESPONSE: Dick Clarke did not indicate that he purchased Clarke Container, Inc. from Martin Clarke in 1980, renaming it Clarke Services. Dick Clarke stated that Clarke Services, Inc. was incorporated in 1967 and was purchased by Dick Clarke in 1980. Dick Clarke further stated that Clarke Services, Inc. did not haul hazardous waste and/or municipal solid waste. Finally, Dick Clarke sold Clarke Services, Inc. to BFI in March, 1984.

7. Clarke's Incinerators, Inc.'s ("CII's") response to Question 6(b) is insufficient. CII must describe the materials it hauled to the Site and provide as precise a description of the chemical constituents as possible. CII must also provide the total amount (by weight or volume) of the materials it hauled to the Site. CII's statements that "each shipment was made in a twenty (20) yard roll-off container" and that "[t]he number and frequency of shipments is uncertain" is non-responsive. CII should conduct a "full and thorough" investigation and indicate the total amount of materials hauled to the Site. If the total amount cannot be conclusively established, the Questionnaire requires CII to provide a "good faith estimate or approximation." If CII finds it necessary to estimate the amount after conducting a "full and thorough" investigation, it must also provide the underlying information used to prepare the estimate.

RESPONSE: Dick Clarke does not have any additional information to provide relative to Clarke's Incinerators, Inc.

8. Clarke Services, Inc. ("CSI") should explain and provide the basis for its statement in response to Question 6(a) that it would not haul waste to the Skinner Site because "among other things, the Site was a competitor." If CSI contends that it hauled all its wastes to locations other than the Skinner Landfill, it should provide an adequate basis for its contention, identifying the alternative disposal sites, the time periods in which

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materials were hauled to alternative sites, and the specific materials hauled to alternative sites. Additionally, the Clarke entities should "identify" all landfills and/or incinerators operated by any Clarke entity at any and all times between 1930 and 1990, providing the name(s) by which each such facility has been known and its complete address. For each such facility, the Clarke entities should also identify the years during which it operated (including any periods of time in which the facility was temporarily shut down or its operations curtailed) and specify what materials were and were not accepted for disposal and/or incineration, breaking down such information by time period as necessary. For all incinerators, the Clarke entities should also state the approximate monthly or annual amount of incinerator ash generated, and identify all locations at which such incinerator ash was disposed. In their response to this follow-up question, the Clarke entities should provide any and all supporting documentation.

RESPONSE: The Skinner Landfill site was a competitor to Clarke's Incinerator, Inc. and Stubbs-Mills Landfill in Morrow, Ohio. Non-hazardous debris collected or hauled by Clarke Services, Inc. would be taken to a Clarke operated waste site. As previously indicated, Clarke Services, Inc. hauled to CII on Kemper Road up to 1974. In 1974, most of the debris collected by Clarke Services, Inc. was hauled to Stubbs-Mills Landfill in Morrow, Ohio. However, minor amounts of debris were hauled to Schlichter Landfill in Ross and BFI's Landfill in Fairfield.

Clarke's Incinerators, Inc. was operated until 1974. Ash generated from the incinerators remains on the premises. No hazardous materials were incinerated.

In approximately 1974, the incinerators were shut down and debris was taken to Stubbs-Mills Landfill in Morrow, Ohio. Thomas Clarke, Sr. became partners with Corwin Fred in Stubbs-Mills Landfill. Dick Clarke purchased Stubbs-Mills Landfill in 1981 or 1982.

9. Clarke, Inc.'s ("CI's") response to Question 6 is inadequate. CI states that "[t]here is no record which would indicate that Clarke, Inc. delivered [waste] to the site." A "full and thorough" investigation is not limited to the documentary "record." CI must conduct a "full and thorough" investigation, which the Questionnaire defines to include interviews of all reasonably available persons reasonably likely to have relevant knowledge. CI must provide an adequate response to Question 6(b)(i) and provide a precise description of materials it hauled to the Site, identifying the chemical constituents of the waste as precisely as possible. Additionally, CI must respond to Question 6(b)(ii) and describe the total amount of materials it hauled to the Site, providing at a minimum, if necessary, a "good faith estimate or approximation" of the amount.

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RESPONSE: Clarke, Inc. was incorporated in July of 1990 and did not haul to the Skinner Landfill site.

10. As required by Question 6(b)(i), Dick Clarke Company ("DCC") must provide a thorough description of the materials it admits hauling to the Site. Categorical identifications (e.g., "barn demolition debris") are insufficient. Question 6(a) requires DCC to provide as precise a description of the materials' chemical constituents as possible. Additionally, DCC must provide the total amount of materials it hauled to the Site, or provide a "good faith estimate or approximation" and the basis for such an estimate as required by the Questionnaire. DCC's statement that it hauled a "minimal amount" is non-responsive.

RESPONSE: Dick Clarke Company hauled 152 loads of wood, dirt, trees, stumps, shrubs, fence, wooden shingles, metal roofing, footers, concrete block and asphalt shingles to the site in 1988 (102 loads) and 1989 (50 loads). A good faith estimate or approximation would be 3,000 loose cubic yards.

11. The Clarke entities must respond to Question 7, regardless of their contention that customer records for the time period no longer exist. A "full and thorough" investigation includes a review of all available documents and interviews of all reasonable available persons reasonably likely to have relevant knowledge. Eyewitnesses have identified numerous customers of the Clarke entities, including, among others, the City of Cincinnati, Avon, General Electric, Procter & Gamble, Kroger, Oxy, and the Tri-City Mall. For these customers, and all others which the Clarke entities are able to identify after conducting the mandated "full and thorough" investigation, the Clarke entities must provide the information sought by Question 7. It is simply not credible that the Clarke entities are able to recall the amounts charged for transporting materials to the Site but cannot recall a single customer.

RESPONSE: Initially, it has been stated that equipment bearing the Clarke logo has been used by entities other than Clarke entities, including BFI after the purchase of Clarke Services, Inc. in 1984.

Dick Clarke is of the belief that Dick's Trash hauled for General Electric, Procter and Gamble, and was the exclusive hauler for Kroger and Tri-County Mall.

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The statement that it is not credible that the Clarke entities are able to recall the amounts charged for transporting materials to the site but cannot recall a single customer is inaccurate and/or does not apply to Dick Clarke. Dick Clarke is able to approximate the amount charged for a load of debris. Available records, including the non-compete agreement Dick Clarke signed with BFI, clearly indicate that Dick Clarke was involved in hauling on a very limited basis. Dick Clarke did not haul on major projects or on a regular basis for any municipality or company. Therefore, it is not surprising in the least that Dick Clarke, at age 58, cannot recall the names of minor jobs in excess of seven to ten years ago.

12. For persons identified in response to Questions 8 and 9, the Clarke entities must provide each person's full name, current or last known address and phone number, and current or last known job title. The Clarke entities should also describe what efforts, if any, have been made to contact these persons.

RESPONSE: Dick Clarke will provide all available information; investigation of location of the referenced individuals is ongoing.

13. Because CII and DCC acknowledge hauling demolition debris to the Skinner Landfill, and eyewitnesses have provided evidence linking Clarke Container, Inc., Clarke Sanitary Fill, and Clarke's Complete Collection to disposal of such debris at the Site, these entities must fully respond to Question 21. Question 21(a) requires, for example, the entities to identify as precisely as possible the source(s) of the debris. In response to this Question, the entities should, in addition to defining the physical nature of the debris, identify the customer for which the debris was transported, and describe as precisely as possible the demolition or construction project which generated the debris. In response to Question 21(c) and (d), these entities should describe in detail their efforts, if any, to remove certain items from the wastes they hauled, identify the time period(s) in which such efforts were undertaken, specifically identify the excluded materials, and state the basis for determining that each such material was actually excluded from individual shipments. CSI, DCC, and CI should provide a further explanation of their response to Question 21 (c) and describe in detail how their employees would "inspect" materials prior to transport. Specifically, CSI, DCC, and CI should identify and substantiate any efforts undertaken to ensure that the entire load, and not just the visible top layer, did not contain materials which they sought to exclude. The Clarke entities also provide "all documents relating to the requested information" as the Questionnaire requires.

RESPONSE: As previously indicated, Dick Clarke companies did not haul and/or dispose of hazardous waste materials. Dick Clarke would specifically advise all potential

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customers that hazardous waste materials would not be handled or bid under any circumstances. In many instances, the debris (wood, dirt, trees, stumps, wood shingles, footers, concrete blocks, metal roofing, and asphalt shingles) was loaded by a Dick Clarke employee. All employees were advised not to handle hazardous materials under any circumstances. Materials not loaded by Dick Clarke employees were inspected with express instructions to refuse to handle hazardous material. If such material was observed, and Dick Clarke cannot recall such an incident, the employee was to leave the material.

14. CSI, DCC and CI should provide the basis for their contention that "Dick Clarke would not bid jobs with any hazardous waste, municipal solid waste, barrels, drums, liquids of any kind, including water, asbestos, paint, tires, refrigerators, air conditioners, dehumidifiers, batteries, and/or sludge" and identify the time period(s) in which such policies were in effect for each entity. As the Questionnaire requires, CSI, DCC, and CI should also provide all documentary evidence, if any, including, for example, all advertisements, bid proposals, or other documentation substantiating or otherwise relating to such policies or to the type of demolition jobs that these entities would accept throughout the relevant time period.

RESPONSE: Dick Clarke has always had the policy that hazardous waste materials would not be handled. The majority of all jobs done by Clarke Services, Inc. were bid or negotiated by Dick Clarke. Jobs that were bid by sales personnel were approved by Dick Clarke.

All jobs done by Dick Clarke Company and Clarke, Inc. were bid by Dick Clarke, and Dick Clarke does not handle hazardous waste.

15. CII should provide the basis for its statement, in response to Question 21(d) that it only transported construction debris from new residential construction to the Site, providing any documentary evidence, including, but not limited to, invoices, load or unload slips, billing and payment records, bid proposals, and advertising and/or promotional materials.

RESPONSE: Dick Clarke is not in possession of, and does not have access to, any information responsive to this request.

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16. The Clarke entities should indicate why persons identified in response to Questions 8 and 9 were not consulted in preparation of responses to the Questionnaire. For example, Dick Clarke's responses to Question 8(b) lists approximately twenty persons who, based upon Dick Clarke's response to Question 27(a), were not interviewed in preparation of responses to the Questionnaire. Dick Clarke's response to Question 27(b), which states that these people were not interviewed because "it is impossible to know which, if any, former employees have relevant information other than to confirm the information already provided[,]" demonstrates the importance of interviewing all such persons.

RESPONSE: Dick Clarke listed every individual he could remember in response to question 8(b). Dick Clarke interviewed individuals to whom he had access.

17. The Clarke entities should "identify" Dick's Trash, which is referenced in Dick Clarke's response to Question 30 and provide the full name, address, and phone number of the entity.

RESPONSE: To the best of Dick Clarke's knowledge, Dick's Trash was owned and operated by Dick Marcus. Dick's Trash was located on Vine Street in St. Bernard, Hamilton County, Ohio. It is Dick Clarke's belief that Dick's Trash was purchased by BFI.

18. The Clarke entities should specify and provide all supporting documentation regarding the disposition of the assets of Thomas Clarke upon his death, including, specifically, all information regarding the assets of Clarke Sanitary Fill.

RESPONSE: Thomas Clarke, Sr. died in 1986 or 1987. Dick Clarke was not involved in the disposition of Thomas Clarke, Sr.'s assets, if any, and received nothing. Interviews with Thomas Clarke, Jr., Timothy Clarke, and Mary Catherine Grossi (Clarke) indicate that Mary Catherine was the Executrix of Thomas Clarke, Sr.'s estate.

19. The Clarke entities should provide all documentation related to the sale of CII sets to Mid-American Waste as referenced in CII's response to Question 31.

RESPONSE: Dick Clarke is not in the possession of any such information.

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20. The Clarke entities should explain their basis for concluding that Clarke Sanitary Fill was unincorporated.

RESPONSE: Dick Clarke is not aware of, and has no information that would indicate that Clarke Sanitary Landfill was a corporation.

Very truly yours,

LINDHORST & DREIDAME

Gary F. Franke

GFF/drl
Enclosures